

MEETING MINUTES CITY OF MILPITAS

Minutes of: Regular Meeting of Milpitas City Council
Date: Tuesday, September 19, 2006
Time: 5:30 PM Closed Session, 7:00 PM Public Business
Location: Council Chambers, Milpitas City Hall,
455 East Calaveras Blvd., Milpitas

ROLL CALL

Mayor Esteves called the meeting to order at 5:30 PM.

PRESENT: Mayor Esteves, Vice Mayor Gomez, Councilmembers Giordano, Livengood and Polanski. Councilmember Livengood arrived at 5:36 PM.

ABSENT: None

CLOSED SESSION

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following issues:

1) Conference on labor negotiations for collective bargaining: City Negotiators: Carmen Valdez and Art Hartinger; Employee Organizations: Laborers' International Union of North America (LIUNA), Milpitas Professional and Technical Group (ProTech), and International Association of Fire Fighters (IAFF). Under Negotiation: Wages, Hours, Benefits, and Working Conditions

2) Conference on public employee appointment: discussion of City Manager applications

The City Council reconvened in Open Session at 7:01 PM with Mayor Esteves presiding and all Councilmembers present.

CLOSED SESSION ANNOUNCEMENT

NONE

PLEDGE

Boy Scouts Troop No. 92 Color Guard led the Pledge of Allegiance.

INVOCATION

Councilmember Giordano introduced Pastor Rev. Kim Clevinger, of Christ Community Church, a 14-year youth minister, who provided the invocation.

MINUTES

MOTION: approve minutes of September 5 and 12, 2006 City Council meetings

Motion/Second: Vice Mayor Gomez/Councilmember Livengood

Councilmember Polanski abstained from approval on the September 12 minutes, as she was absent from that meeting.

Motion carried by a vote of:

AYES: 5 (Sept. 5)

NOES: 0

AYES: 4 (Sept. 12)

NOES: 0

ABSTAIN: 1 (Polanski)

SCHEDULE OF MEETINGS

MOTION: to approve the Schedule of Meetings, as submitted.

Motion/Second: Councilmember Livengood/Councilmember Giordano

Motion carried by a vote of:

AYES: 5

NOES: 0

PRESENTATION

Proclamations:

Mayor Esteves proclaimed "Pollution Prevention Week" for the week of September 18-24, 2006. The plaque was accepted by Recycling and Source Reduction Advisory Commission member John Cimino.

Mayor Esteves proclaimed Family Day "A Day to Eat Dinner with Your Children" to be celebrated on Monday, September 25, 2006. Plaque was accepted by Milpitas resident Daniel Bobay, president of the Milpitas Council of Parent Teacher Associations.

Assemblymember Alberto Torrico was not present at the Council meeting.

PUBLIC FORUM

None

ANNOUNCEMENTS

Mayor Esteves welcomed Elegance Realty and Mortgage Co., a new business in the City. He also thanked staff for preparation and the recent ceremony for the September 11 remembrance. A new segment of the Berryessa Creek Trail was opened last weekend, and named for Mr. Neil MacKenzie, a longtime leader in the Sunnyhills neighborhood.

ANNOUNCEMENT OF CONFLICT OF INTEREST

None

APPROVAL OF AGENDA

Motion: to approve the agenda, as submitted

Motion/Second: Councilmember Giordano/Councilmember Polanski

Motion carried by a vote of:

AYES: 5

NOES: 0

CONSENT CALENDAR

Motion: to approve the Consent Calendar (items noted by an *asterisk), as submitted

Motion/Second: Councilmember Giordano/Councilmember Livengood

Motion carried by a vote of:

AYES: 5

NOES: 0

*** 4. Mayor's Recommendations for Youth Advisory Commission Appointments**

Approved the following appointments, recommended by Mayor Esteves:

Youth Advisory Commission

Re-appointed Aditya Ullal to a term expiring September 2007.

Re-appointed Joseph Hall to a term expiring September 2007.

Re-appointed Lorden Fok to a term expiring September 2007.

Re-appointed Nida Asif to a term expiring September 2007.

Re-appointed Jay Kumar to a term expiring September 2007.

Appointed Jason Nguyen (current Alternate No. 1) as a voting member to a term expiring September 2007.

Appointed Josephine Fong (current Alternate No. 3) as Alternate No. 1 to a term expiring September 2007.

Appointed Sareen Sandhu (current Alternate No. 4) as Alternate No. 2 to a term expiring September 2007.

Appointed Brian Tran to a term expiring September 2007.

Appointed Phuong La to a term expiring September 2007.

Appointed Chih-Ming Hsieh as Alternate No. 3 to a term expiring September 2007.

* 5. Two CASP Grants for FY 2006-07	Approved two Cultural Arts Support Programs grants to GENCO and Calaveras Repertory Theatre for FY 2006-07 totaling \$2,620, as recommended by the Arts Commission.
* 7. Site and Architectural Approval of Amendment No. SA2006-41 for Hillside Residence	Approved Site and Architecture for Amendment No. SA 2006-41 for Construction of new accessory structures, including a deck, gazebo, arbor and trellis, addition of new lighting and the relocation of the perimeter fence for hillside residence, based on the noted special conditions, at 1608 Pebble Beach Ct, APN 029-55-019
* 8. Water Supply Assessment and Written Verification for Sufficient Water Supply for Transit Area Specific Plan	Approved Water Supply Assessment for the Transit Area Specific Plan.
* 9. Finance Subcommittee's Recommendation for funding Arts Day and Community Band	Approved recommendation to fund Arts Day Milpitas for \$2,000 and the Milpitas Community Concert Band for \$4,260 (via transfer of that amount from Council Community Promotions budget to the Recreation budget).
* 10. Resolution Amending List of Designated Full Disclosure Positions for Milpitas' Conflict of Interest Code	Adopted Resolution No. 7627 updating the list of positions required to file under the City's Conflict of Interest Code.
* 11. Resolution Granting Initial Acceptance Project No. 6073	Adopted Resolution No. 7628 granting initial acceptance of the Sewer Deficiency and Structural Correction Program - Pipe Bursting/Reaming, Project No. 6073, subject to the one-year warranty period and reduction of the faithful performance bond to \$12,954.00.
* 12. Assignment and Assumption Agreement Between the Milpitas, Veritas and Wells Fargo Bank	Authorized the City Manager to execute the Assignment and Assumption Agreement (Veritas and Wells Fargo), subject to approval as to form by the City Attorney.
* 13. Assignment and Assumption Agreement and Certificate of Satisfaction Between Milpitas, Veritas and BRE/Milpitas	Authorized the City Manager to execute the Assignment and Assumption Agreement and Certificate of Satisfaction (Veritas and BRE/Milpitas), subject to approval as to form by the City Attorney.
* 14. Award Construction Contract to Columbia Electric for Project No. 4231	Awarded the construction contract for the Traffic Signal Modification at So. Main Street and Montague Expressway, Project No. 4231, to Columbia Electric, in the amount of \$49,000.
* 15. Agreement Amendment No. 4 with HMM Engineers and Appropriate Grant Funding, Project No. 4225	For Project No. 4225, South Park Victoria Drive Pavement Rehabilitation: 1. Approved agreement Amendment No. 4 with HMM Engineers, in the amount of \$16,000.00, subject to approval as to form by the City Attorney. 2. Appropriated the California Integrated Waste Management Board grant of \$17,500 to Project No. 4225.
* 16. Subdivision Improvement Agreement, Final Map and Operation and Maintenance Agreement for KB Home	For the new subdivision, 61-unit single family and 96-town homes development will be served by public utilities located within private streets and public utility easements, except for the storm drainage system, which will be privately maintained. Council approved the final map, and authorized the City Manager to execute the secured subdivision improvement agreement and operation and maintenance agreement, subject to approval as to form by the City Attorney.
* 17. Award the Bid for Public Access Television Studio Equipment to VMI, Inc.	Awarded the bid for the Public Access Television Studio Equipment to VMI, Inc. in the not to exceed amount of \$226,810.48.

- PUBLIC HEARING**

Principal Housing Planner Felix Reliford presented the CAPER for FY 2005-06 as required by the federal government (HUD) for Community Development Block Grant funding. It was a look back on the previous fiscal year on the City's accomplishments with CDBG funds. A 15-day public review and comment period was advertised from August 24 to September 8, and no comments were received in advance of the meeting.

Mr. Reliford highlighted achievements, with regard to housing built or proposed for low- and moderate-income residents and families. Milpitas had exceeded its housing goal by 950 units, over five years. 23 different service providers were funded, with \$536,000 distributed for the benefit of Milpitas low- and moderate-income residents. He further reviewed overall housing proposed or built from 2005 through the present, including affordable units.

Councilmember Giordano asked whether the City would consider housing needs for seniors specifically, within City goals. She inquired about housing goals based on age rather than income, for housing for seniors in particular. Staff replied not at this time.

Mayor Esteves opened the public hearing for comments.

Gary Mise, felt Councilmember Giordano's point was a good one, where necessity should be considered for affordable housing; Milpitas had plenty of seniors in need, and to get funding just to satisfy pre-requisites did not seem to be the right agenda. To supply housing should be out of necessity, not just due to low-income status. Old people need houses, too, he noted.

(1) Motion: to close the public hearing

Motion/Second: Councilmember Giordano/Councilmember Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

(2) Motion: Adopt the Consolidated Annual Performance Evaluation Report (CAPER) for FY 2005-2006

Motion/Second: Councilmember Giordano/Councilmember Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

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Motion/Second: Agency/Councilmember Polanski /Agency/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

RA 4. Approval of Agenda and Consent Calendar

Motion: approve the agenda and RDA consent calendar

Vice Mayor Gomez asked for Item No. RA6 to heard prior to No. RA5.

Motion/Second: Vice Chair/Vice Mayor Gomez/ Agency/Councilmember Livengood

Motion carried by a vote of: AYES: 5
NOES: 0

RA 5. Public Hearing: First Reading/Introduce Ordinances No. 192.16 and No. 192.17, Amending the Redevelopment Plan for the Great Mall Project Area and Project Area No. 1

Economic Development Manager Diana Whitecar noted the goal to amend the two redevelopment areas in the City, as she had informed the Agency/Council prior to this date. The legal action was to extend the life of the two project areas (with the exception of the MidTown area added in 2003), which must be done via the introduction and adoption of ordinances.

The Mayor opened the public hearing for comments; none heard.

(1) Motion: Close the public hearing

Motion/Second: Vice Chair/Vice Mayor Gomez/ Agency/Councilmember Livengood

Motion carried by a vote of: AYES: 5
NOES: 0

City Attorney Mattas read aloud the title of Ordinance No.192.16 “An Ordinance of the City of Milpitas, California, Amending Certain Time Limitations with Respect to the Amended and Restated Redevelopment Plan for the Milpitas Redevelopment Project Area No. 1”

(2) Motion: Waive the first reading beyond the title of Ordinance No. 192.16

Motion/Second: Vice Chair/Vice Mayor Gomez/ Agency/Councilmember Livengood

Motion carried by a vote of: AYES: 5
NOES: 0

(3) Motion: Introduce Ordinance No. 192.16 amending Redevelopment Plan for Project Area No. 1 to extend the life of the project area, as allowed by Senate Bill 1096

Motion/Second: Vice Chair/Vice Mayor Gomez / Agency/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

Next, City Attorney Mattas read aloud the title of Ordinance No.192.17 “An Ordinance of the City of Milpitas, California, Amending Certain Time Limitations with Respect to the Redevelopment Plan for the Great Mall Redevelopment Project”

(4) Motion: Waive the first reading beyond the title of Ordinance No. 192.17

Motion/Second: Agency/Councilmember Livengood / Vice Chair/Vice Mayor Gomez

Motion carried by a vote of: AYES: 5
NOES: 0

(5) Motion: Introduce Ordinance No. No. 192.17 amending the Great Mall Redevelopment Project Plan to extend the life of the project area, as allowed by Senate Bill 1096

Motion/Second: Vice Chair/Vice Mayor Gomez/ Agency/Councilmember Livengood

Motion carried by a vote of:

AYES: 5

NOES: 0

RA 6. Approve Project Stabilization Agreement for the New Library, Project 8162

CIP Project Manager Mark Rogge introduced the Library Project related issue. He had been pleased to work with Mr. Neil Struthers of the Santa Clara and San Benito Counties Building and Construction Trades Council and Mr. Michael J. Vlaming of Scarth-Lyons and Associates.

The Project Stabilization Agreement was presented for approval by the Agency/Council, with five major points highlighted by staff. No. 2 was the intent for no construction work stoppage, strikes, sympathy strikes or lockouts (though they could withhold labor under one circumstance described). Most unique in this agreement was the Building Construction Education Program, an effort to educate local students to about the trades, and introduce students to possible career choices.

Councilmember Polanski commented (as Mr. Livengood had the last meeting on this subject) that an excellent part of the PSA was the education portion for local students. She was very pleased with the inclusion for the benefit of local high school students.

Councilmember Livengood wanted to echo what Ms. Polanski said. The agreement made strong demands on staff, it looked at new ideas, and would maintain a good relationship with the schools and Milpitas students.

Vice Mayor Gomez agreed, too, with his two colleagues. He believed there were lessons learned from previous projects in the City, and with this agreement it encouraged good labor practices, as the City moved toward construction of the new library.

Mayor Esteves asked if there were any speakers on this issue.

Neil Struthers, President of Building and Construction Trades Council, thanked all the construction workers who came down to the meeting – many were seated in the audience. He thanked City staff Mr. Rogge and City Engineer Greg Armendariz. He was glad it did not have to be the same old struggle, while there was innovation with tools available, as he pointed to the PSA document. Mr. Struthers also mentioned S4CA, a new non-profit group about education for young people.

Motion: Approve the Project Stabilization Agreement for the Milpitas Public Library, Project No. 8162; and, direct staff to work with the Building and Construction Trades Council, Milpitas Unified School District, and the library contractor to develop related educational opportunities and report back to the Library Subcommittee and City Council.

Motion/Second: Agency/Councilmember Livengood / Vice Chair/Vice Mayor Gomez

Mayor Esteves reminded his colleagues that he voted no on the concept for a project labor agreement idea in the past, and continued to maintain that position.

Motion carried by a vote of:

AYES: 4

NOES: 1 (Esteves)

*** RA 7.** Resolution Granting Initial Acceptance: Storm Water Pump Station Improvements

Adopted Resolution No. RA 266 granting initial acceptance of Oak Creek Pump Station Improvement/Project No. 8140 and Pump Station Improvement - Replacement Roofs at Bellew and Penitencia/Project No. 8106, subject to the one-year warranty period and

reduction of the faithful performance bond to \$9,436.10.

* **RA 8.** Approve Contract Change Order for D'arcy & Harty on the North Main St. Utilities Project

Authorized staff to approve a contract change order in the amount of \$69,670.14 to D'Arcy & Harty Construction, Inc. for additional work for N. Main Street Utilities, Project No. 8153.

RA 9. ADJOURNMENT

Chair/Mayor Esteves adjourned the Redevelopment Agency meeting at 7:49 PM.

REPORT OF OFFICERS

2. Ballot Initiative - Proposition 1C

Motion: to endorse statewide Proposition 1C, the Housing and Emergency Shelter Trust Fund Act of 2006.

Motion/Second: Vice Mayor Gomez/Councilmember Giordano

Motion carried by a vote of:

AYES: 5

NOES: 0

3. Sylvia Ave. Neighbor Concerns with regard to KB Home Project

Mayor Esteves received a letter from Sylvia Ave. residents, regarding their ongoing concerns about the KB Home project under construction on Abel St., and that KB was not meeting its commitment, made in June, to the neighbors.

Mr. Quang Do, 210 Sylvia Ave, addressed the Council for the second time this year. He expressed problems with the construction at the KB Home site, especially the height of the model units that looked into his backyard. He had not received any documentation from the construction company and was unhappy that the four story homes did not have opaque windows installed on the top floors, as promised.

Mr. Hung Do, father of prior speaker, wanted the City to review the plans by KB Home vs. what had been approved by the Planning Commission and City Council. He urged the City "do something real." He wanted a fair re-evaluation (appraisal) of property values in his neighborhood.

City Planning Director Tom Williams reported that neighborhood compatibility were the issues that planning staff considered, when reviewing any proposed project - not economics or home values. City Attorney Mattas commented further on land use planning decisions by a City and when it could be appropriate to conduct property appraisals. Ordinarily, the City would not expend public funds for the appraisal of private property, unless trying to purchase property.

Mayor Esteves stated he did not support the devaluation of property due to new housing developments.

Mr. Williams displayed and described the three stories approved over a raised garage for the units at Terra Serena, and the project was indeed being constructed according to the approved plans. Two public meetings were held, prior to the approval in the past, and drawings and plans had been shown to homeowner/neighbors.

Mayor Esteves asked about the opaque windows.

Mr. Ray Panek, KB Home Vice President, explained that the company had planned to install the windows after model units were sold. The company planned to maintain three stories built as model home units, with no further 3-story units built on that frontage (adjacent to Sylvia Ave.). KB Home met weekly with neighbors, worked with them on fence issues, and property/fence line. Mr. Panek distributed information detailing these meetings to the City Council, City Manager, and City Attorney. The intention was to put in opaque windows on the third floor adjacent to Sylvia, once the model home units were sold, prior to people moving in.

With regard to drainage, city staff Engineer Mehdi Khaila, provide a detailed overview of the plans by KB Home. The developer responded positively to the City suggestion that they hire a drainage specialist. KB did so, to effectively ensure that flood control would be maintained in the future, and for Sylvia Ave. homeowners, Mr. Khaila believed that drainage would be improved during future rain storms.

A man (who did not state his name) spoke who lived in a home parallel to the built model units. "What are we to do now?" he asked. People could look into his backyard, from the windows of the bedrooms, and this frustrated him.

Mayor Esteves stated that the City should be accountable for decisions made and with plans going forward, to help the homeowners with their concerns.

Mr. Nom Pham, Sylvia Ave. resident, wanted a letter from KB Home regarding his property value. He reiterated some neighbor concerns, including fence issues.

Mr. Do requested that KB Home provide a copy of the land survey that had been done for the project, showing homeowner property lines v. former County land line. City staff agreed to provide that to residents on Sylvia Ave.

Joe DaSilva, Sylvia Ave. resident, spoke about the patio in the back sections of the new homes and his dissatisfaction that they would still look into his backyard.

Mayor Esteves summed up the discussion, satisfied that City staff would provide information requested by the homeowners, that KB Home would improve its communication with the residents, that the drainage issue was explained in detail, and that the opaque windows on model units would be installed sooner rather than after sale of those homes.

NEW BUSINESS

6. July 2007 Meeting Schedule

Motion: Move to cancel both City Council meetings for July 2007

Motion/Second: Councilmember Polanski/Vice Mayor Gomez

Motion carried by a vote of:

AYES: 5

NOES: 0

RESOLUTIONS

Two Resolutions were adopted on the Consent Calendar.

BIDS AND CONTRACTS

Six items were adopted on the Consent Calendar.


CLAIMS AND DEMANDS

One demand for payment was approved on the Consent Calendar.

ADJOURNMENT

Mayor Esteves adjourned the meeting at 8:38 PM.

The foregoing minutes were approved by the Milpitas City Council as submitted on October 3, 2006.


Mary Lavelle
City Clerk